

LIB

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
LEONARD RIST,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 83-15

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a notice of violation and civil penalty for violation of the state's open burning statutes and respondent's codes, came on for hearing before the Pollution Control Hearings Board; Larry Faulk, Member and presiding; at Vancouver, Washington, on April 6, 1983. The formal hearing was electronically recorded.

Appellant Leonard Rist appeared pro se. Respondent Southwest Air Pollution Control Authority (SWAPCA) appeared by its attorney David Jahn.

Witnesses were sworn and testified. Exhibits were examined. From

1 the testimony heard and exhibits examined, the Pollution Control
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
6 a certified copy of its Regulation I containing respondent's
7 regulations and amendments thereto, which are noticed.

8 II

9 On January 13, 1983, at about 4:00 p.m., the appellant Mr. Rist
10 allowed or caused an outdoor fire of natural vegetation to occur at
11 the site of his residence, which is also the site of his wife's
12 recycling business.

13 III

14 The fire pile was approximately eight feet in diameter and three
15 feet high at the rear of the premises on the site of a previous burn
16 pile. The fire contained metal cans and papers. The pile also
17 contained a discarded Christmas tree, blackberry vines and tree limbs.

18 IV

19 Respondent's inspector noticed smoke from the roadway and arrived
20 at the site of the fire and discussed codes and practices of open
21 burning, both residential and commercial, with Georgie Rist. The fire
22 was not burning while they spoke. The appellant received and signed a
23 field notice of violation of Section 400-035 of Regulation I.

24 V

25 On January 17, 1983, appellant was issued a regular notice of

1 violation and a letter from the Executive Director of respondent
2 Agency levying a \$250 fine. From this appellant appeals.

3 VI

4 Appellant indicated that he was totally disabled, does not work
5 and goes to the hospital frequently. On January 13, 1983, he was at
6 the hospital and his wife was also away from the home. His two
7 teenage boys started the fire even though he had admonished them not
8 to do so on frequent occasions; and told them to deposit the
9 prohibited materials in his dumpster which they rent for \$60 a month.
10 When Georgie Rist came home and saw the fire, she told them to put it
11 out, which they proceeded to do. This caused the smoke which drew the
12 attention of the air pollution control specialist from SWAPCA.

13 VII

14 Appellant has received one prior violation of SWAPCA Regulation
15 I. He was fined \$250 of which \$200 was suspended by the Washington
16 State Pollution Control Hearings Board because of the Rist's recent
17 move to Vancouver and Clark County and consequent lack of familiarity
18 with certain regulations and fire department rules.

19 VIII

20 Any Conclusion of Law which should be deemed a Finding of Fact is
21 hereby adopted as such.

22 From these Findings the Board comes to these

23 CONCLUSIONS OF LAW

24 I

25 The Legislature of the State of Washington has enacted the

1 following policy on outdoor fires:

2 It is the policy of the state to achieve and maintain
3 high levels of air quality and to this end to
4 minimize to the greatest extent reasonably possible
5 the burning of outdoor fires. Consistent with this
6 policy, the legislature declares that such fires
7 should be allowed only on a limited basis under
8 strict regulation and close control. (RCW 70.94.740).

9 Pursuant to this and other legislative authority, the respondent has
10 adopted its Regulation I, Section 400-035, which provides in relevant
11 part:

12 No person shall ignite, cause to be ignited, permit
13 to be ignited, or suffer, allow, or maintain any open
14 fire within the jurisdiction of the Authority, except
15 as provided in this Regulation...(2) Open burning may
16 be done under permit (under certain conditions)...

17 Appellant and his family members' failure to utilize lawful
18 disposal methods for recycling business trash caused him to allow open
19 burning of natural vegetation mixed with trash, which cannot qualify
20 for permit, and therefore, to be in violation of Section 400-035(2).

21 II

22 Under our State's policy of limited outdoor burning, it is not
23 safe to assume that even a little recycling business trash may be
24 disposed of by open burning, whether that is accomplished by minors or
25 adults. Before igniting outdoor fires, it is the responsibility of
26 the citizen concerned to become aware of and to adhere precisely to
27 air pollution control rules, such as respondent's Regulation I.

Because the violations committed by the appellant are apparently
his second offense against respondent's Regulation I while laboring
under his physical and financial hardship, part of the assessed

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
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1 penalty should be suspended.

2 III

3 Any Finding of Fact which should be deemed a Conclusion of Law is
4 hereby adopted as such.

5 From these Conclusions, the Pollution Control Hearings Board
6 enters this

ORDER

The notice of violation and \$250 civil penalty is affirmed; provided, however, that \$100 of the penalty is suspended on condition that appellant not violate respondent's regulations for a period of one year after this Order becomes final.

DONE this ____ day of April, 1983.

POLLUTION CONTROL HEARINGS BOARD



LAWRENCE J. FAULK, Member



GAYLE ROTHROCK, Chairman